

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF BUNCOMBE

15 DHR 05410

WNC RAY OF HOPE, INC.,

Petitioner,

v.

SMOKY MOUNTAIN CENTER LOCAL
MANAGEMENT ENTITY/ MANAGED CARE)
ORGANIZATION, *as legally authorized*)
contractor of and agent for N.C.)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES,)

Respondent.

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into effective as of the date of execution by and between Petitioner WNC Ray of Hope, Inc. (hereinafter “Petitioner” or “Ray of Hope”), and Respondent Smoky Mountain LME/MCO (hereinafter “Respondent” or “Smoky”). The foregoing are at times referred to herein collectively as “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Smoky is a Local Management Entity/Managed Care Organization (“LME/MCO”) as defined at N.C. Gen. Stat. § 122C-3(20c) and is responsible for management and oversight of all publicly-funded mental health, intellectual/developmental disabilities, and substance use/addiction (“MH/IDD/SA”) services in the following North Carolina counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey Counties (“Smoky’s Catchment Area”); and

WHEREAS, Ray of Hope is a provider of mental health and behavioral health services with its principal place of business in Asheville, North Carolina. Ray of Hope assists consumers, including Medicaid recipients, at home, in school, and in the community to prevent, overcome, and manage functional deficits caused by mental health issues, substance use/addiction disorders, and developmental delays; and

WHEREAS, Ray of Hope entered into a contract with Smoky for the delivery of MH/IDD/SA services, including but not limited to, Assertive Community Treatment Team (“ACTT”) services and Community Support Team (“CST”) services, effective from July 1, 2014

through June 30, 2015 (the “FY14–15 Contract”); and

WHEREAS, Smoky provided written notice to Ray of Hope on May 27, 2015 that Smoky had decided not to renew the provision of ACTT and CST services in Ray of Hope’s upcoming FY15–16 Contract after December 31, 2015, and further advising that no further referrals for ACTT or CST services would be made to Ray of Hope after October 31, 2015 (“the May 27, 2015 Notice”). Ray of Hope contends that the May 27, 2015 Notice terminates Ray of Hope’s right to participate in the ACTT and CST programs for Smoky consumers; and

WHEREAS, Ray of Hope executed a Contract with Smoky effective July 1, 2015 through June 30, 2016, which does not include the provision of ACTT or CST services to Smoky consumers after January 1, 2016 (“the FY15–16 Contract”) and reserved its rights at that time to challenge the May 27, 2015 Notice; and

WHEREAS, Ray of Hope filed a Petition for Contested Case Hearing with the NC Office of Administrative Hearings against Smoky on July 24, 2015, challenging the May 27, 2015 Notice; and

WHEREAS, the Parties desire to compromise and settle any and all existing, known, and potential disputes, claims, or rights between them, as set forth above; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the disputes and potential disputes described herein, the terms and conditions of which are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, managers, assigns, officers, directors, employees, and agents, agree as follows:

1. The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of potential litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, illegal conduct, nonconformity, error, other deficiency or legal position on the part of any Party. Any such alleged liability, illegal conduct, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

2. Within five (5) business days of the complete execution of this Agreement by all Parties, Smoky will issue an Amendment to the FY15–16 Contract, extending the ability of Ray of Hope to deliver ACTT and CST services from December 31, 2015 through June 30, 2016, in order to allow for sufficient time for the transition of consumers. Consistent with the manner in

which Smoky previously notified other providers and other stakeholders of the May 27, 2015 Notice, Smoky will notify other providers and stakeholders that in order to ensure the appropriate transition of consumers, Ray of Hope's ability to deliver ACTT and CST services will be through June 30, 2016, after which time Ray of Hope will no longer provide ACTT or CST services within the Smoky Provider Network. All referrals of new consumers for ACTT or CST services to Ray of Hope will end no later than March 31, 2016. So long as Smoky complies with its obligations under this Paragraph and Paragraphs 3 and 4, Ray of Hope agrees that it will not challenge the June 30, 2016 end date of ACTT and CST portion of the contract at the Office of Administrative Hearings or any other forum. Nothing in this Agreement shall be construed to affect Ray of Hope's ability to deliver ACTT or CST services to any consumer not managed by Smoky.

3. Smoky will amend existing authorizations for medically necessary ACTT and CST services, within the applicable limitations and requirements of DMA Clinical Coverage Policy Nos. 8A and 8A-1, for Ray of Hope's existing consumers to ensure consistency with the terms of this Agreement.

4. Ray of Hope agrees to make good faith efforts to transition all Smoky consumers currently receiving ACTT and/or CST services from Ray of Hope to other providers within the Smoky Provider Network on or before March 31, 2016. Smoky will provide good faith assistance with the transition of consumers to other providers within the Smoky Provider Network in order to ensure a safe and orderly transition in advance of March 31, 2016.

5. Smoky will not make any new referrals of consumers for ACTT or CST services to Ray of Hope on or after March 31, 2016.

6. Smoky will act in good faith towards Ray of Hope and in accordance with applicable federal and state laws, rules, and regulations with regard to any future procurement or provider network decisions. With regard to any future procurement or provider network decisions, Ray of Hope shall be treated the same as any other provider that is in good standing with the LME/MCO. Neither the issuance of the May 27, 2015 Notice nor this Agreement shall have any bearing on Ray of Hope's status as a provider and the decisions made by Smoky regarding Ray of Hope's status as a provider in Smoky's catchment area.

7. The issuance of the May 27, 2015 Notice, the facts alleged in the May 27, 2015 Notice, and this Agreement will not be considered by Smoky as having any effect on Ray of Hope's good standing with Smoky internally or in response to queries from the Centers for Medicare & Medicaid Services ("CMS"), NC Department of Health and Human Services ("DHHS"), its Division of Medical Assistance ("DMA"), the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, any other LME/MCO operating in North Carolina or any State Medicaid agency or Medicaid managed care organization in any state outside of North Carolina, so long as Ray of Hope has complied or is complying with the provisions of this Agreement. For the purposes of any future enrollment, reenrollment, participation, credentialing, or re-credentialing applications submitted by Ray of Hope to DHHS,

DMA, or any LME/MCO in North Carolina, the May 27, 2015 Notice, and this Agreement will not be reflected as an amount owed to Smoky that has not been paid in full, or a violation of federal or state laws, rules, or regulations governing North Carolina's Medicaid Program, so long as Ray of Hope has complied or is complying with the provisions of this Agreement.

8. The Parties agree that nothing in this Agreement should be construed to preclude Ray of Hope from responding to future requests for services in Smoky's Catchment Area, including requests by Smoky directly and requests by other providers within the Smoky network for subcontracted services.

9. Smoky will not conduct any further audits, post-payment reviews or investigations of Ray of Hope, unless required to do so under the terms of Smoky's contract with the North Carolina Division of Medical Assistance in response to a credible allegation of fraud, waste, or abuse that is new and distinct from the facts alleged in any previous audits, investigations, or complaints, or in response to any complaint or grievance received by Smoky from a consumer, family member, community stakeholder, or other person, even if anonymous. Smoky is permitted to continue to perform routine and focused monitoring reviews as required under the terms of Smoky's contract with the Division of Medical Assistance to ensure appropriate quality of care.

10. Each Party hereby releases the other, its current and former officials, employees, agents, and representatives, from any and all liability and causes of action that have arisen or may arise out of the May 27, 2015 Notice and 15 DHR 05410.

11. Ray of Hope agrees to dismiss with prejudice the Petition for Contested Case Hearing filed on July 24, 2015 (15 DHR 05410), no later than three (3) business days from the execution of this Agreement.

12. The Parties agree that neither they nor anyone acting on their behalf shall hereafter make any derogatory, disparaging, or critical statement about any Party to this Agreement about the nature or adequacy of any conduct attributable to the Parties or the claims and defenses related to this Agreement.

13. The Parties will bear their own costs and fees, including all attorneys' fees.

14. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

15. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provisions of this Agreement are held to be invalid or

unenforceable by a court of competent jurisdiction, all other provisions shall nevertheless continue in full force and effect.

16. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own act. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

17. This Agreement shall be executed in two counterparts via an electronic signature platform, each of which will be deemed an original.

18. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

19. This Agreement is binding on the Parties' predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, agents, and contractors.

20. This Agreement shall be effective upon the complete execution by all Parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW

This Settlement Agreement agreed and executed by the Parties hereto:

For Smoky Mountain LME/MCO

DocuSigned by:

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Brian Ingraham, CEO/ Area Director

9/25/2015

Date

For Provider, WNC Ray of Hope, Inc.

DocuSigned by:

9979787E3F1A4A7...

Elias Rolett Co-owner

9/25/2015

Date

DocuSigned by:

F19E763ADEF2461...

Mark Yokley Co-Owner

9/25/2015

Date